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Nos. 146, 147

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

RALPH RAYNOR,
Respondent.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

CHETT FOWLER
Respondent.

PETITION FOR REHEARING

Respondents by their attorney respectfully petition this honorable court to grant a rehearing of the above entitled cause, and in support of said petition, respectfully show the following:

The decision of the court causes several results which create great confusion in the counterfeiting laws and are otherwise injurious to the public interest, most important of which results perhaps are the following, viz:

(1) Because of the decision, the unauthorized possession of genuine government paper is nowhere punishable by the law.

(2) Because of the decision, the statutory provisions here involved are inconsistent with and nullify the provisions of Section 148 requiring intent to constitute the crime of forgery or counterfeiting; of Section 150 requiring intent to constitute the crime of possession of counterfeit plates; of Section 150 requiring intent to constitute the crime of possessing a counterfeit obligation; of Section 151 requiring intent to constitute the crime of passing a counterfeit obligation; of Section 151 requiring intent to constitute the crime of possessing a counterfeit obligation; of Section 153 requiring intent to constitute the crime of possessing imprints, etc. of tools, etc. fitted to be used in printing an obligation or bank note; and of Section 154 requiring intent to constitute the crime of buying and selling counterfeits.

(3) Because of the decision, the mere possession of paper for counterfeiting (regardless of intent) is punishable much more severely than is the completed crime of buying, selling, etc. any counterfeit obligation, with the intent that the same shall be passed, etc., as true and genuine. (Sec. 154 U. S. Criminal Code).

(4) Because of the decision, the mere possession of commercial white bond paper by anyone (without authority from the Treasury) is condemned, for all such paper is similar to the genuine government paper and is adapted for making counterfeit obligations.

We respectfully submit a short discussion of these points under their respective paragraph numbers.

(1) The majority opinion excludes the distinctive paper from the protection of the law. Protection against unauthorized possession of the distinctive paper seems clearly to be more necessary than protection against possession of an imitation of such paper. The distinctive paper is much more of a dangerous instrumentality in the hands of a counterfeiter than is a mere imitation of the distinctive paper. Thus a counterfeiting upon distinctive paper would be much more deceptive and injurious than one upon imitation paper because much more difficult of detection, and would be more injurious to the credit of the country's currency and to the public interest than a counterfeiting upon similar paper, which can be detected with comparative ease. We suggest that Congress had this danger in mind in drawing the law here involved, and in directly referring to distinctive paper, and omitting all reference to imitating or counterfeiting it.

Each of the statutes relied on in the majority opinion expressly uses one or more of the words "forging, counterfeiting, imitating." The omission of each and all of these words from Sec. 150 is highly significant and indicates plainly, we submit, that Congress here was concerned with the preventing of unauthorized possession of the "distinctive paper" rather than imitations thereof.

It is noteworthy that in all statutes in which Congress wished to prohibit counterfeiting, it has said so directly and plainly and not resorted to indirection or

inference. Therefore the omission of any such words in the clause of Sec. 150 here involved, in the counterfeiting laws, which have had the careful thought and phrasing of Congress for more than a century, unmistakably indicates that this clause is not the ordinary prohibition of counterfeiting, but instead a guarding of the "distinctive" government paper as held in the minority decision of this court, the majority opinion of the Court of Appeals herein, and the unanimous opinion of the Court of Appeals (2nd Cir.) in the Krakowski case, 161 Fed. 88.

The Act of 1863 mentioned in the majority opinion expressly applied to "all officials of the Treasury Department engaged in engraving and preparing the bonds, notes and fractional currency hereby authorized to be issued, and to all official and unofficial persons in any manner employed under the provisions of this Act." (Appendix Gov't. Brief, p. 52). This language clearly indicates that Congress was desirous of protecting against unlawful use of genuine paper, plates, etc., by government officials and employes having lawful custody and charge of them. This protection, we submit, was cast over the distinctive government paper by the provisions of the Act of 1864, and continued in the language of the clause here involved.

(2) The drastic nature of the statutory provisions here involved is such as to indicate clearly an unusual and extraordinary subject-matter, the very possession of which is forbidden to the public. Such inhibitions are usually found in connection with dynamite, poisons, habit-forming drugs, deadly weapons, and the like. Here, however, paper is referred to. Is it this

common white bond commercial paper, to be found ordinarily in the possession of millions of citizens, being kept for legitimate use, or is it the distinctive government paper which can only come into the possession of the ordinary person by an irregularity, and for which he has no legitimate use? Surely the latter.

The drastic nature of the law must have basis in an unusual and extraordinary possession that is at once either actually or potentially very injurious to the public interest and also of such a nature that it could rarely if ever be innocent. The only paper whose possession falls within the class last mentioned is distinctive paper with red and blue silk fibres therein, which can only be manufactured for government use, and with which no person unauthorized by the Treasury Department has anything to do. To hold, as does the majority opinion, that the law prohibits the possession of all paper suitable for counterfeiting, creates much confusion, we submit, in many other sections of the law and nullifies to a large extent their provisions. Thus, under the majority decision, possession of such paper is a crime (without intent), while under Section 148, forgery or counterfeiting of government obligations (without intent) is not a crime; under Section 150, possession of a counterfeit plate (without intent) is not a crime; under Section 150, possession of counterfeit obligation (without intent) is not a crime; under Section 151, passing of a counterfeit obligation (without intent) is not a crime, nor is the possession of such counterfeit obligation (without intent) a crime; under Section 153, the possession without authority (without intent) of imprints, etc. of tools, etc. fitted to be used in printing

or stamping an obligation or bank note, is not a crime, and under Section 154 the buying or selling of counterfeits (without intent) is not a crime.

All of these provisions, we respectfully submit, seem in conflict with the clause here involved, if the majority decision herein is allowed to stand as the authoritative construction of the law in question.

(3) The dissenting opinion of this court, the majority opinion of the Court of Appeals herein, and the unanimous opinion of the Court of Appeals in the Krakowski case, 181 Fed. 88, all agree that a decision such as that taken by the majority of the Supreme Court, causes the statute to apply to every dealer having high grade white bond paper. Mr. Burton, Government witness, also testified that "most any bond paper could be used for the printing of securities." (R. 33) meaning of course, counterfeit securities. "You could print them (obligations) on it and get just as good an impression and just as good a printing quality." (R. 58).

We respectfully submit that Congress did not intend to punish such possession of white bond paper, nor to require every dealer and citizen having possession thereof to obtain authority from the Treasury therefor.

(4) Comparison of the statutory clause here involved with other offenses in the counterfeiting laws, seems to demonstrate clearly that the dissenting opinion is right in stating that these provisions were not meant to cover counterfeiting, or preparations

antecedent to counterfeiting. At most, the possession of paper suitable for counterfeiting is but one of the many steps or acts necessary before the counterfeit is completed. Nevertheless, under the majority decision, this preliminary act of possession of paper alone would be punishable, while the commission of this act, coupled with the other numerous acts necessary to complete the finished counterfeit, would not be punished. The part would be a crime, but the whole would not be.

Again, white bond paper, whether with or without red and blue marks on its surface, is nothing more than one of many potential ingredients of a counterfeit obligation. Inasmuch as the possession of the completed counterfeit is not a crime, surely possession of merely one of the potential ingredients of such counterfeit, could not be a crime.

On the other hand the mere possession of white bond paper is so common and so rarely used for illegitimate purposes that Congress certainly would not condemn such possession without evil intent.

All of the other inhibitions of possession of articles found in Sections 148 to 155, inclusive, (Appendix, Government Brief, pp. 58-60) are coupled with a specific wrongful intent.

Surely the possession of unprinted paper would not be made punishable regardless of intent, when the possession of plates suitable for counterfeiting and the very completed counterfeit obligation itself, is not punished unless accompanied by the specific evil

intent to use them wrongfully. (Section 150, Criminal Code).

CONCLUSION

In conclusion, we respectfully pray that this Honorable Court may grant a rehearing of the above causes, and that the judgments of the Circuit Court of Appeals may be affirmed.

Respectfully submitted,

JOHN ELLIOTT BYRNE,
Attorney for Respondents.

CERTIFICATE

I, John Elliott Byrne, attorney for Respondents, Robert Raynor and Chett Fowler, do hereby certify that the foregoing petition for a rehearing of the above entitled causes, is presented in good faith and not for delay.

JOHN ELLIOTT BYRNE,
Attorney for Respondents.